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19 UNITED STATES OF AMERICA

20 UNITED STATES DISTRICT COURT

21 FOR THE CENTRAL DISTRICT OF CALIFORNIA

22 UNITED STATES OF AMERICA,

23 No. 5:24-CR-163 (A)-JGB

24 Plaintiff,

25 GOVERNMENT'S RESPONSE TO  
DEFENDANTS' SENTENCING MEMORANDUM

v.

26 MARCOS GUERRERO ET AL.,

27 **Sentencing Date:** June 23, 2025  
**Sentencing Time:** 10:00 a.m.  
**Location:** Courtroom 1

28 Defendants.

Plaintiff United States of America, by and through its counsel of record, the United States Attorney for the Central District of California and Assistant United States Attorneys Joshua J. Lee, Tritia L. Yuen, and Neil P. Thakor, hereby files its response to defendants' sentencing memorandum.

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This response is based on the attached memorandum of points and authorities, the Presentence Investigation Reports, the files and records in this case, and such further evidence, argument, and briefing, as the Court may permit.

Dated: June 5, 2025

Respectfully submitted,

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/s/

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1                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2                   The United States Probation Office ("USPO"), in determining the  
3 relevant advisory guidelines for the sentencing against all  
4 defendants, applied the aider and abettor liability and/or the co-  
5 conspirator liability to certain sentencing enhancements against  
6 defendants. (See Dkt. 252 ¶¶ 34-60 (Guerrero Revised PSR); Dkt. 246  
7 ¶¶ 33-58 (Gafare Revised PSR); Dkt. 250 ¶¶ 32-57 (Leal Revised PSR);  
8 Dkt. 248 ¶¶ 31-50 (Solarez Revised PSR)). The matter was set for  
9 sentencing on June 2, 2025.

10                  On June 2, 2025, at the sentencing hearings,<sup>1</sup> this Court  
11 requested that the government file a written brief as to whether co-  
12 conspirator liability applies to sentencing enhancements in response  
13 to defendants' objections to the sentencing guidelines calculations.  
14 As explained below, co-conspirator liability, as well as aider and  
15 abettor liability, does apply to sentencing enhancements.

16                  Under the United States Sentencing Guidelines ("U.S.S.G."),  
17 specifically section 1B1.3 (relevant conduct), a court can apply both  
18 aider and abettor liability and co-conspirator liability when  
19 applying the relevant sentencing enhancements under Chapters Two or  
20 Three of the U.S.S.G. U.S.S.G. § 1B1.3(a). U.S.S.G. § 1B1.3 states  
21 that sentencing enhancements can be applied in the following: **(1)**  
22 "all acts and omissions committed, aided, abetted, counseled,  
23 commanded, induced, procured, or willfully caused by the defendant"  
24 or **(2)** "in the case of a jointly undertaken criminal activity (a  
25 criminal plan, scheme, endeavor, or enterprise undertaken by the  
26 defendant in concert with others, whether or not charged as a

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<sup>1</sup> The sentencing hearings were continued to June 23, 2025.

1 conspiracy), all acts and omissions of others that were—(i) within  
2 the scope of the jointly undertaken criminal activity, (ii) in  
3 furtherance of that criminal activity, and (iii) reasonably  
4 foreseeable in connection with that criminal activity; that occurred  
5 during the commission of the offense of conviction, in preparation  
6 for that offense, or in the course of attempting to avoid detection  
7 or responsibility for that offense[.]” U.S.S.G. §§ 1B1.3(a)(1)(A) &  
8 (a)(1)(B).

9 As the Ninth Circuit has explained, “the Sentencing Guidelines  
10 allow enhancements to apply ‘in the case of a jointly undertaken  
11 criminal activity . . . , [to] all reasonably foreseeable acts and  
12 omissions of others in furtherance of the jointly undertaken criminal  
13 activity [under U.S.S.G. 1B1.3(a)(1)(B)].’” United States v.  
14 Hornbuckle, 784 F.3d 549, 555 (9th Cir. 2015); see also United States  
15 v. Garcia, 909 F.2d 1346, 1350 n.1 (9th Cir. 1990) (“More important,  
16 in relying on Pinkerton liability . . . co-conspirator liability for  
17 the purpose of sentence enhancement has been dealt with explicitly in  
18 the Guidelines.”).

19 Defendants’ specific objection appears to center around  
20 testimony that may have been unclear as to who struck the blows that  
21 severely injured the victim, who brandished the firearm, and who  
22 drove the victim’s car away from the scene of the crime. Indeed, the  
23 Ninth Circuit has held repeatedly in similar situations that a co-  
24 conspirator, who was not the person that actually committed the act  
25 that led to the sentencing enhancement, can be held accountable for  
26 the enhancement as a co-conspirator. See e.g., United States v.  
27 Lavender, 224 F.3d 939, 942 (9th Cir. 2000) (holding co-conspirators,  
28 who were not holding the dangerous weapon, accountable for the

1 dangerous weapon sentencing enhancement because the main defendant's  
2 use of the weapon was foreseeable to the co-conspirators); United  
3 States v. Washington, 297 Fed. Appx. 612, 613 (9th Cir. 2008)  
4 (stating that co-conspirator liability does apply to sentencing  
5 enhancements); United States v. Zelaya, 114 F.3d 869, 872 (9th Cir.  
6 1997) (applying threat of death sentencing enhancement to a co-  
7 conspirator because the threat was reasonably foreseeable under  
8 U.S.S.G. § 1B1.3).

9 Thus, based on the plain language of U.S.S.G. § 1B1.3, as well  
10 as established Ninth Circuit precedent, co-conspirator liability (as  
11 well as aider and abettor liability) does apply to sentencing  
12 enhancements, and the Court should overrule defendants' objections  
13 and apply the enhancements to all three defendants.

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